

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEONARD W. HILL,

Petitioner,

v.

BRIAN WILLIAMS, et al.,

Respondents.

Case No.: 2:17-cv-00155-APG-VCF

Order

Leonard W. Hill, a Nevada prisoner, filed a counseled petition for writ of habeas corpus under 28 U.S.C. § 2254. I deny Hill's habeas petition, deny him a certificate of appealability, and direct the Clerk of the Court to enter judgment accordingly.

I. BACKGROUND

Hill's convictions are the result of events that occurred in Clark County, Nevada about December 12, 2005. ECF No. 33-5. In its order affirming Hill's conviction, the Supreme Court of Nevada described the crime, as revealed by the evidence at Hill's trial, as follows:

In the morning hours of December 12, 2005, the Las Vegas Metropolitan Police Department (LVMPD) was called to the shared apartment of appellant Leonard W. Hill and Robin Martin for a domestic disturbance. After defusing the situation by escorting Hill and Martin into separate rooms and determining that neither party posed a danger to the other, the LVMPD left the apartment. Several hours later, a neighbor called the LVMPD upon hearing loud noises coming from the apartment. Subsequently, the LVMPD entered the apartment and found Martin on the floor. Martin was not breathing and was later pronounced dead. A Clark County medical examiner later determined that Martin's death was a homicide as a result of strangulation.

ECF No. 28-3 at 2.

1 Following a jury trial, Hill was convicted of first-degree murder and sentenced to life in
2 prison with a minimum parole eligibility of 20 years. ECF Nos. 33-18, 33-21. Hill appealed, and
3 the Supreme Court of Nevada reversed and remanded on February 29, 2008, determining that
4 some expert testimony was erroneously admitted and there were several instances of
5 prosecutorial misconduct. ECF No. 33-35. A second jury trial was held, and Hill was again
6 found guilty of first-degree murder. ECF No. 27-9. The state district court again sentenced Hill
7 to life in prison with a minimum parole eligibility of 20 years. ECF No. 34-16. Hill appealed,
8 and the Supreme Court of Nevada affirmed on May 27, 2011. ECF No. 28-3. Remittitur issued
9 on June 21, 2011. ECF No. 34-33.

10 Hill's pro se state habeas petition and counseled supplemental petition were filed on
11 April 26, 2012 and May 28, 2014, respectively. ECF Nos. 28-4, 28-5. The state district court
12 denied the petition on February 20, 2015. ECF No. 28-7. Hill appealed, and the Supreme Court
13 of Nevada affirmed on November 17, 2016. ECF No. 28-9. Remittitur issued on December 14,
14 2016. ECF No. 35-32.

15 Hill's pro se federal habeas petition and counseled first amended petition were filed on
16 August 14, 2017 and April 27, 2018, respectively. ECF Nos. 8, 21. The respondents moved to
17 dismiss the amended petition on October 22, 2018. ECF No. 32. I granted the motion in part,
18 finding that Ground 1 and the claims in Ground 5 (that the State disparaged defense counsel)
19 were unexhausted. ECF No. 44. Hill moved for the dismissal of Ground 1 and the partial
20 dismissal of Ground 5. ECF No. 45. I granted the motion. ECF No. 46. The respondents
21 answered the remaining grounds in Hill's first amended petition on December 2, 2019, and Hill
22 replied on February 14, 2020. ECF Nos. 50, 53.

1 In his remaining grounds for relief, Hill alleges the following violations of his federal
2 constitutional rights:

- 3 2. The state district court failed to dismiss a biased juror.
- 4 3(a). The state district court denied his right to question Detective Andersen.
- 5 3(b). The state district court limited the scope of his impeachment.
- 6 3(c). The state district court improperly limited voir dire.
- 7 4. The State presented insufficient evidence.
- 8 5. The State committed prosecutorial misconduct.
- 9 6. The state district court rejected defense jury instructions.
- 10 7(a). His trial counsel failed to adequately prepare for an effective cross-examination of Dr. Olson.
- 11 7(b). His trial counsel failed to object to Linda Jones' testimony.
- 12 7(c). His trial counsel implicitly admitted guilt during voir dire.
- 13 7(d). His trial counsel failed to object to jury instructions.
- 14 7(e). His trial counsel failed to object to prosecutorial misconduct.
- 15 8. There were cumulative errors.

16 ECF No. 21.

17 **II. STANDARD OF REVIEW**

18 The standard of review generally applicable in habeas corpus cases is set forth in the
19 Antiterrorism and Effective Death Penalty Act (AEDPA):

20 An application for a writ of habeas corpus on behalf of a person in
21 custody pursuant to the judgment of a State court shall not be
22 granted with respect to any claim that was adjudicated on the merits
23 in State court proceedings unless the adjudication of the claim –

- 24 (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- 25 (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

26 28 U.S.C. § 2254(d). A state court decision is contrary to clearly established Supreme Court
27 precedent, within the meaning of 28 U.S.C. § 2254, “if the state court applies a rule that

1 contradicts the governing law set forth in [the Supreme Court’s] cases” or “if the state court
2 confronts a set of facts that are materially indistinguishable from a decision of [the Supreme]
3 Court.” *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362,
4 405-06 (2000), and citing *Bell v. Cone*, 535 U.S. 685, 694 (2002)). A state court decision is an
5 unreasonable application of clearly established Supreme Court precedent within the meaning of
6 28 U.S.C. § 2254(d) “if the state court identifies the correct governing legal principle from [the
7 Supreme] Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s
8 case.” *Id.* at 75 (quoting *Williams*, 529 U.S. at 413). “The ‘unreasonable application’ clause
9 requires the state court decision to be more than incorrect or erroneous. The state court’s
10 application of clearly established law must be objectively unreasonable.” *Id.* (quoting *Williams*,
11 529 U.S. at 409-10) (internal citation omitted).

12 The Supreme Court has instructed that “[a] state court’s determination that a claim lacks
13 merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the
14 correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing
15 *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court has stated “that even a
16 strong case for relief does not mean the state court’s contrary conclusion was unreasonable.” *Id.*
17 at 102 (citing *Lockyer*, 538 U.S. at 75); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)
18 (describing the standard as a “difficult to meet” and “highly deferential standard for evaluating
19 state-court rulings, which demands that state-court decisions be given the benefit of the doubt”
20 (internal quotation marks and citations omitted)).

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1 **III. DISCUSSION**

2 **A. Ground 2**

3 In Ground 2, Hill alleges that his federal constitutional rights were violated when the
 4 state district court failed to dismiss a biased juror. ECF No. 21 at 13. Hill elaborates that Leroy
 5 Reyes, an alternate juror, had significant connections to one of the State’s witnesses, Julianna
 6 Gross, and these connections created a presumptive bias against him. *Id.* In affirming Hill’s
 7 judgment of conviction, the Supreme Court of Nevada held: “Hill contends that the district court
 8 abused its discretion in . . . rejecting a for-cause challenge to an alternative juror We have
 9 reviewed th[is] argument[] and conclude that [it] lack[s] merit.” ECF No. 28-3 at 4 n.3. When a
 10 state court has denied a federal constitutional claim on the merits without explanation, I must
 11 first “determine what arguments or theories supported or . . . could have supported, the state
 12 court’s decision,” and then I “must ask whether it is possible fairminded jurists could disagree
 13 that those arguments or theories are inconsistent with the holding in a prior decision of [the
 14 United States Supreme] Court.”¹ *Harrington*, 562 U.S. at 102.

15 Following opening statements, outside the presence of the jury, the State informed the
 16 trial judge that one of its witnesses, Julianna Gross, indicated that she knew Leroy Reyes, an
 17 alternate juror. ECF No. 26-1 at 52-53; *see also* ECF No. 25-11 at 67. The judge brought Mr.
 18 Reyes into the courtroom to evaluate whether “there’s a problem.” ECF No. 26-1 at 54. Mr.
 19 Reyes explained that he knew the witness by the name Julie Perez and that she had dated his
 20 roommate “10 or 11 years ago.” *Id.* at 54-55. Mr. Reyes had not seen Ms. Gross for eight to ten
 21 years, but he spoke with her on the telephone for approximately five minutes several months
 22

23 ¹ My review of numerous grounds in Hill’s amended petition is based on this two-step process
 described in *Harrington*, and I will not repeat it going forward.

1 before the trial. *Id.* at 56, 61. Mr. Reyes had been scheduling a surgery at a doctor's office, and
2 the person scheduling the surgery was best friends with Ms. Gross. *Id.* at 56, 59. When that
3 person found out through small talk that Mr. Reyes knew Ms. Gross, she called Ms. Gross and
4 handed the telephone to Mr. Reyes. *Id.* at 56-57, 60. Mr. Reyes also disclosed to the trial judge
5 that he worked with Ms. Gross' mother and cousin at the Golden Nugget. *Id.* at 58-59.

6 In response to the judge's question about whether there was "[a]nything about [his]
7 friendship with Ms. [Gross] that would affect [his] ability to serve as a fair and impartial juror if
8 [Ms. Gross] was called to be a witness in this case," Mr. Reyes responded, "No." *Id.* at 61. The
9 judge then refused Hill's trial counsel's request that Mr. Reyes be excused. *Id.* at 62. Mr. Reyes
10 was not included in the jury panel that deliberated, as he was allowed to leave the courthouse
11 following closing arguments due to his status as an alternate juror. ECF Nos. 27-7 at 86, 34-14 at
12 3-4.

13 "[T]he right to jury trial guarantees to the criminally accused a fair trial by a panel of
14 impartial, 'indifferent' jurors." *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). And "the remedy for
15 allegations of jury partiality is a hearing in which the defendant has the opportunity to prove
16 actual bias." *Smith v. Phillips*, 455 U.S. 209, 215 (1982) (explaining that "due process does not
17 require a new trial every time a juror has been placed in a potentially compromising situation").
18 Although the trial judge did not hold a formal hearing, it thoroughly questioned Mr. Reyes about
19 his connection with Ms. Gross. *See* ECF No. 26-1 at 54-61. And although Mr. Reyes
20 knew Ms. Gross, they had an attenuated connection and, importantly, Mr. Reyes indicated that
21 this connection would not affect his ability to be impartial. *See id.* at 61. Further, Mr. Reyes did
22 not partake in deliberations. *See, e.g., Ross v. Oklahoma*, 487 U.S. 81, 88 (1988) (explaining that
23 "[a]ny claim that the jury was not impartial . . . must focus . . . on the jurors who ultimately sat").

1 Fairminded jurists would agree that this reasoning establishes that Hill’s federal constitutional
2 rights were not violated. *Harrington*, 562 U.S. at 102. Hill is not entitled to relief on Ground 2.

3 **B. Ground 3**

4 In Ground 3, Hill alleges three incidents where the trial judge denied his right to present a
5 complete defense. ECF No. 21 at 15. “The right of an accused in a criminal trial to due process
6 is, in essence, the right to a fair opportunity to defend against the State’s accusations.” *Chambers*
7 *v. Mississippi*, 410 U.S. 284, 294 (1973); *see also Washington v. Texas*, 388 U.S. 14, 19 (1967)
8 (explaining that an accused “has the right to present his own witnesses to establish a defense”
9 and that “[t]his right is a fundamental element of due process of law”); *DePetris v. Kuykendall*,
10 239 F.3d 1057, 1062 (9th Cir. 2001) (“The Supreme Court has made clear that the erroneous
11 exclusion of critical, corroborative defense evidence may violate both the Fifth Amendment due
12 process right to a fair trial and the Sixth Amendment right to present a defense.”). “[T]he
13 Constitution [also] guarantees criminal defendants ‘a meaningful opportunity to present a
14 complete defense.’” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v.*
15 *Trombetta*, 467 U.S. 479, 485 (1984)). A defendant’s opportunity to be heard “would be an
16 empty one if the State were permitted to exclude competent, reliable evidence . . . when such
17 evidence is central to the defendant’s claim of innocence.” *Id.* This is because, “[i]n the absence
18 of any valid state justification, exclusion of . . . exculpatory evidence deprives a defendant of the
19 basic right to have the prosecutor’s case encounter and ‘survive the crucible of meaningful
20 adversarial testing.’” *Id.* at 690-91 (quoting *United States v. Cronin*, 466 U.S. 648, 656 (1984)).

21 That being said, the Supreme Court of the United States has “never questioned the power
22 of States to exclude evidence through the application of evidentiary rules that themselves serve
23 the interests of fairness and reliability—even if the defendant would prefer to see that evidence

admitted.” *Crane*, 476 U.S. at 690. In fact, “state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials,” *United States v. Scheffer*, 523 U.S. 303, 308 (1998), and the Supreme Court has stated its approval of “well-established rules of evidence [that] permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.” *Holmes v. South Carolina*, 547 U.S. 319, 320 (2006); *see also Nevada v. Jackson*, 569 U.S. 505, 509 (2013) (“Only rarely have we held that the right to present a complete defense was violated by the exclusion of defense evidence under a state rule of evidence.”).

1. Ground 3(a)

In Ground 3(a), Hill alleges that the trial judge denied him the right to question Detective Andersen about the original lack of testing of the blood evidence—evidence that Hill argues supported his defense that the police rushed to judgment. ECF No. 21 at 15-16. In affirming Hill’s judgment of conviction, the Supreme Court of Nevada held:

Hill contends that the district court abused its discretion in excluding Detective Anderson’s testimony regarding the delay in DNA processing. Hill argues that the district court improperly restricted his ability to present his theory of the case. Hill also argues that he sought to examine Detective Anderson concerning her rationale for not immediately processing the DNA samples to demonstrate the inadequacy of the investigation and the insufficiency of the evidence.

The decision to exclude testimony is within the sound discretion of the district court, and the court’s decision will not be overturned absent manifest error. *Means v. State*, 120 Nev. 1001, 1007-08, 103 P.3d 25, 29 (2004).

Although a criminal defendant has a due process right to introduce into evidence any testimony or documentation which would tend to prove the defendant’s theory of the case, that right is subject to

1 the rules of evidence, including the rules that
2 evidence must be relevant, and that even relevant
3 evidence is inadmissible if its probative value is
substantially outweighed by the danger of unfair
prejudice, of confusion of the issues or of misleading
the jury.

4
5 *Rose v. State*, 123 Nev. 194, 205 n.18, 163 P.3d 408, 415-16 n.18
(2007) (internal citations and quotations omitted); NRS 48.035(1).

6 Here, we conclude that Detective Anderson's testimony about the
7 delay in DNA processing, although relevant, would have unfairly
8 prejudiced Hill by alerting the jury to Hill's first conviction. *See*
9 NRS 48.035(1). Although Hill maintains that Anderson could have
10 referred to an ambiguous "prior hearing" during her testimony, the
State is entitled to rebut the testimony, which could have included a
reference to Hill's prior trial and conviction. Therefore, we
conclude that the district court did not abuse its discretion in
excluding Detective Anderson's testimony.

11 ECF No. 28-3 at 4-5. The Supreme Court of Nevada's rejection of Hill's claim was neither
12 contrary to nor an unreasonable application of clearly established law as determined by the
13 Supreme Court of the United States and was not based on an unreasonable determination of the
14 facts.

15 At Hill's first trial in 2006, Detective Laura Andersen testified that she was dispatched to
16 Hill's apartment and was assigned to inspect "the physical scene itself." ECF No. 24-1 at 127-29.
17 Along with some blood samples from the carpet and a cordless telephone with some apparent
18 blood on it, "a steak knife with a plastic black handle was recovered from underneath a chair in
19 the dining room." *Id.* at 129-130. Although the knife was tested for fingerprints, "no DNA
20 analysis" was done on the blood evidence. *Id.* at 134. Detective Andersen explained why: "DNA
21 testing is usually for . . . unknown suspect cases or multiple suspect cases where there is a
22 quantitative amount of blood, you're trying to identify a suspect." *Id.* at 134-35. In the case at
23 hand, due to Hill's statements that he killed Martin, "there was not any more suspects that were

1 outstanding,” so DNA testing “would have been redundant and . . . very time consuming, very
2 complicated, [a] very long process.” *Id.* at 135-36.

3 Hill’s trial counsel later discussed the lack of DNA testing in his closing argument:

4 Don’t you think you deserve more evidence before someone
5 seriously asks you to consider . . . convicting somebody of first
6 degree murder or any murder for that matter? Don’t you want to
7 know whose blood was where? Testing blood for identity is that so
8 Hollywood? Is that so futuristic that we don’t expect it? . . .

9 You know what in point of fact you should expect to have that kind
10 of basic and elementary evidence. You should demand it. When
11 the State is asking you to convict somebody of the harshest crime
12 we have, let them do some basic and elementary forensic testing.
13 You can demand that. You should demand it.

14 ECF No. 24-3 at 107-09.

15 Following the Supreme Court of Nevada’s reversal of Hill’s conviction and before the
16 second trial commenced, Detective Andersen obtained a buccal swab from Hill in order to test
17 the DNA from the blood evidence. *See* ECF No. 25-5 at 3. Later, during Hill’s second trial in
18 2009, the State informed the trial judge that it wanted Hill’s trial counsel to make an offer of
19 proof regarding Detective Andersen. ECF No. 27-5 at 162-63. The State had previously told
20 Hill’s trial counsel that it would be calling Detective Anderson to testify at the second trial and
21 that Hill’s trial counsel did not need to subpoena her. *Id.* at 162. However, the State changed its
22 mind, indicating that it was no longer going to be calling Detective Andersen because the DNA
23 had since been tested and it no longer needed Detective Andersen to “explain why she didn’t do
[the testing] in this particular case.” *Id.* at 162-63.

24 In response, Hill’s trial counsel explained that the timing of the DNA testing was
25 “completely relevant to a rush a judgment to them not investigating at the point and time that this
26 happened whether or not this was self-defense.” *Id.* at 166. Hill’s trial counsel argued that

1 “[t]here’s nothing improper” about him “saying that these DNA reports were done in 2009.” *Id.*
2 at 166. The trial judge retorted, “[e]xcept the fact that the State doesn’t get to explain why they
3 were done in 2009” instead of 2006. *Id.* The judge then ruled that Hill’s trial counsel would not
4 be able to ask Detective Andersen about the timing of the DNA testing because “we can’t get
5 into the fact that he was convicted and this is a retrial.” *Id.* at 171. The judge elaborated that if
6 Hill’s trial counsel questioned Detective Andersen about the timing of the DNA testing, “her
7 explanation would be: He was convicted; it was overturned and we decided to retest it so that our
8 investigation wouldn’t be impeached the way it was in the first trial.” *Id.* at 175. The trial judge
9 concluded that this explanation would be “totally unfair to” Hill. *Id.*

10 To be sure, this resulted in Hill’s trial counsel losing the ability to argue that law
11 enforcement rushed to judgment by failing to timely test the DNA evidence. However, even if
12 losing this argument was detrimental to Hill, it cannot be concluded that Hill’s federal
13 constitutional rights were violated. As the Supreme Court of Nevada reasonably determined,
14 asking Detective Andersen about the DNA testing would have alerted the jury that Hill was
15 previously tried and convicted. Indeed, allowing Hill’s trial counsel to question Detective
16 Andersen about the fact that the DNA testing was not completed during the initial investigation
17 would have opened the door to the State questioning Detective Andersen about the history
18 leading up to the eventual testing of the DNA to rebut any procrastination implication.
19 Therefore, the Supreme Court of Nevada reasonably concluded that evidence that Hill had been
20 previously convicted of the murder of Martin would have been unfairly prejudicial to Hill in
21 violation of Nev. Rev. Stat. § 48.035(1), which provides that “evidence is not admissible if its
22 probative value is substantially outweighed by the danger of unfair prejudice.” This ruling is
23 consistent with precedent of the Supreme Court of the United States that trial judges are allowed

1 “to exclude evidence if its probative value is outweighed by certain other factors such as unfair
2 prejudice.” *Holmes*, 547 U.S. at 320. Because the Supreme Court of Nevada reasonably denied
3 Hill’s claim, he is denied federal habeas relief for Ground 3(a).

4 **2. Ground 3(b)**

5 In Ground 3(b), Hill alleges that the trial judge improperly limited the scope of his
6 impeachment of Linda Jones, Martin’s sister, by forbidding him from fully exploring the
7 underlying facts of her previous conviction. ECF No. 21 at 17. Hill explains that he was unable
8 to fully refute Jones’ credibility, which was important because her testimony undermined his
9 self-defense claim. ECF No. 53 at 14. In affirming Hill’s judgment of conviction, the Supreme
10 Court of Nevada held: “Hill contends that the district court abused its discretion in . . . excluding
11 evidence offered to impeach a prosecution witness We have reviewed th[is] argument[] and
12 conclude that [it] lack[s] merit.” ECF No. 28-3 at 4 n.3.

13 The State called Linda Jones, Martin’s younger sister, as a witness. ECF No. 26-2 at 120-
14 21. Jones testified that she was previously the property manager at La Fiesta Apartment Homes
15 where Martin resided. *Id.* at 123-24. Jones described Martin as being “really always calm, cool,
16 and just easy going about everything.” *Id.* at 137. Prior to the killing, Martin told Jones that
17 “[s]he was going to get a restraining order” against Hill. *Id.* at 142. And the night of the killing,
18 Martin called Jones, and Jones could hear Hill saying hurtful things to Martin. *Id.* at 147-48.

19 Before cross-examination, Hill’s trial counsel informed the trial judge that Jones had a
20 “felony conviction for theft involv[ing] the embezzlement of \$75,000 from La Fiesta
21 Apartments” and requested that he be able to bring that fact out due to Jones “open[ing] the
22 door” during her direct examination. ECF No. 27-5 at 5. The judge refused Hill’s trial counsel’s
23 request, directing him to limit his questions to whether she had a felony conviction and what the

1 conviction was for. *Id.* at 6. The judge indicated that Hill’s trial counsel “can’t go into the
2 details.” *Id.* at 6-7.

3 Later, during cross-examination, Hill’s trial counsel asked Jones if she was an ex-felon, if
4 she had “a felony from 2005 for theft,” if she was “a trusted employee of La Fiesta,” and if she
5 “also ha[d] a felony out of California for concealing a child in violation of a court order.” ECF
6 No. 27-5 at 15-16. Hill’s trial counsel then requested a bench conference where he asked if he
7 could “ask her about the La Fiesta.” *Id.* at 16. The judge refused, stating “you opened up the
8 door to ask her questions that I said you couldn’t ask her, and whether she’s a trusted employee
9 really isn’t relevant to these proceedings.” *Id.* at 17.

10 Questioning Jones about the details of her theft conviction likely would have further
11 impeached her. However, it cannot be concluded that Hill’s constitutional rights were violated
12 by the trial judge’s denial of his request to bring forth this information. The judge determined
13 that Nevada law did not entitle Hill to further question Jones. *See Nev. Rev. Stat. § 50.095(1)*
14 (providing that “[f]or the purpose of attacking the credibility of a witness, evidence that the
15 witness has been convicted of a crime is admissible”). The Supreme Court of Nevada, the final
16 arbiter of Nevada law, affirmed Hill’s convictions, determining that the trial judge did not abuse
17 its discretion. Because the trial judge determined that the details of Jones’ theft conviction were
18 not admissible under Nev. Rev. Stat. § 50.095(1), this constitutes a valid state justification for
19 disallowing further questioning of Jones about her conviction. *See Crane*, 476 U.S. 690-91. It
20 thus cannot be concluded that Hill’s right to present a complete defense, right to due process, and
21 right to a fair trial were violated. *Chambers*, 410 U.S. at 294; *Trombetta*, 467 U.S. at 485.
22 Moreover, Hill’s trial counsel was able to sufficiently impeach Jones with the conviction itself.
23 *See Wood v. Alaska*, 957 F.2d 1544, 1550 (9th Cir. 1992) (explaining that “[a] trial court does

1 not abuse its discretion [to determine whether evidence was relevant and its prejudicial effect] so
2 long as the jury has ‘sufficient information’ upon which to assess the credibility of witnesses”).
3 Fairminded jurists would agree that this reasoning establishes that Hill’s federal constitutional
4 rights were not violated. *Harrington*, 562 U.S. at 102. Hill is not entitled to relief on Ground
5 3(a).

6 **3. Ground 3(c)**

7 In Ground 3(c), Hill alleges that the trial judge improperly limited voir dire by
8 obstructing his relevant inquiry into the jurors’ views of the differences between killing and
9 murder. ECF No. 21 at 18. Hill argues that this undermined his ability to present his defense that
10 he was not guilty of first-degree murder and prevented his trial counsel from ensuring that he
11 was tried by an impartial jury that would consider lesser-included offenses. ECF No. 53 at 16-17.
12 In affirming Hill’s judgment of conviction, the Supreme Court of Nevada held: “Hill contends
13 that the district court abused its discretion in . . . limiting attempts to inform potential jurors
14 about the law and the defense theory during voir dire We have reviewed th[is] argument[]
15 and conclude that [it] lack[s] merit.” ECF No. 28-3 at 4 n.3.

16 During Hill’s trial counsel’s questioning of a prospective juror, he stated, “[n]ow, in this
17 case, Robin Martin was found dead, and in this case the defense is not disputing that Mr. Hill
18 was responsible for that. Can you think of some reasons why we’re going to trial?” ECF No. 25-
19 10 at 210. The State requested a bench conference following this question. *Id.* The trial judge
20 indicated that Hill’s trial counsel’s line of questioning was inappropriate, explaining that “the
21 only issue is whether they can be fair and impartial.” *Id.* at 210-11. Hill’s trial counsel defended
22 his question, stating, “I’d like to know whether or not this jury can be fair and impartial as it
23 relates to lesser - - if this jury cannot consider lesser included crimes, I don’t - - I will not be sure

1 that I'd have a fair and impartial jury." *Id.* at 211. The judge disagreed, reasoning that Hill's trial
2 counsel is "basically instructing them on the law," which is inappropriate during voir dire,
3 especially since the judge had already "asked every juror if they can follow the law, and they've
4 all said yes." *Id.* at 211-13.

5 "[P]art of the guarantee of a defendant's right to an impartial jury is an adequate voir dire
6 to identify unqualified jurors." *Morgan v. Illinois*, 504 U.S. 719, 729 (1992). Indeed, "[w]ithout
7 an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be
8 able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled."
9 *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981); *see also Darbin v. Nourse*, 664 F.2d
10 1109, 1113-14 (9th Cir. 1981) (explaining that "[t]he principal purpose of voir dire is to probe
11 each prospective juror's state of mind to enable the trial judge to determine actual bias and to
12 allow counsel to assess suspected bias or prejudice. Thus, a voir dire examination must be
13 conducted in a manner that allows the parties to effectively and intelligently exercise their right
14 to peremptory challenges and challenges for cause").

15 Hill fails to demonstrate that the trial judge's refusal to allow his trial counsel to ask the
16 jury about their knowledge of lesser-included crimes violated his right to an impartial jury or his
17 right to present a complete defense. First, it is unclear how asking the jury why it believed Hill
18 was going to trial or about the law on lesser-included crimes allowed him to "identify
19 unqualified jurors." *Morgan*, 504 U.S. at 729. Instead, as the trial judge reasonably noted, the
20 jurors already stated that they would follow the law given to them (*see* ECF No. 25-10 at 57),
21 which would include the law on lesser-included offenses. Therefore, as the judge aptly
22 determined, Hill's trial counsel was merely "arguing the case" (ECF No. 25-10 at 213) with this
23 line of questioning—not delving into impartiality. Second, Hill's trial counsel was able to

1 present and argue his defense during the presentation of evidence and closing arguments, such
2 that limiting the arguing of that defense during voir dire did not hamper his “meaningful
3 opportunity to present a complete defense.” *Trombetta*, 467 U.S. at 485. Fairminded jurists
4 would agree that this reasoning establishes that Hill’s federal constitutional rights were not
5 violated. *Harrington*, 562 U.S. at 102. Hill is not entitled to relief on Ground 3(c).

6 **C. Ground 4**

7 In Ground 4, Hill alleges that his federal constitutional rights were violated when the
8 State failed to present sufficient evidence that he acted with premeditation, deliberation, and
9 willfulness to convict him of first-degree murder. ECF No. 21 at 18-19. Hill also alleges that the
10 State failed to prove that he did not act in self-defense. *Id.* at 20. In affirming Hill’s judgment of
11 conviction, the Supreme Court of Nevada held: “Hill contends that . . . the State failed to present
12 sufficient evidence to prove that the killing was willful, deliberate, and premeditated and not the
13 result of self-defense We have reviewed th[is] argument[] and conclude that [it] lack[s]
14 merit.” ECF No. 28-3 at 4 n.3.

15 “[T]he Due Process Clause protects the accused against conviction except upon proof
16 beyond a reasonable doubt of every fact necessary to constitute the crime with which he is
17 charged.” *In re Winship*, 397 U.S. 358, 364 (1970). A federal habeas petitioner “faces a heavy
18 burden when challenging the sufficiency of the evidence used to obtain a state conviction on
19 federal due process grounds.” *Juan H. v. Allen*, 408 F.3d 1262, 1274 (9th Cir. 2005). On direct
20 review of a sufficiency of the evidence claim, a state court must determine whether “any rational
21 trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”
22 *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The evidence is to be viewed “in the light most
23 favorable to the prosecution.” *See id.* Federal habeas relief is available only if the state-court

1 determination that the evidence was sufficient to support a conviction was an “objectively
2 unreasonable” application of *Jackson*. See *Juan H.*, 408 F.3d at 1275 n.13.

3 **1. Relevant evidence**

4 Dr. Alane Olson, the medical examiner, testified that she conducted an autopsy of Martin
5 and determined that Martin “died as a result of strangulation” and that her “manner of death
6 [was] homicide.” ECF No. 26-1 at 68, 88. Dr. Olson explained that someone being strangled
7 would “lose consciousness within 10 to 15 seconds,” and that, “[i]n [her] opinion, the blood flow
8 would need to be impeded for a period of three to four minutes to cause death.” *Id.* at 91, 94.

9 John Gross lived in the apartment directly below Martin and Hill and worked with Hill.
10 ECF No. 26-1 at 107-08. While carpooling to work with Gross, Hill would sometimes call
11 Martin a bitch, and about a month before Martin’s death, Hill indicated that “he had met
12 someone” and had “a new flame in his life.” *Id.* at 114, 116. On December 10, 2005, Hill came
13 to Gross’ residence “because [Martin] had changed the locks” on their apartment, and Hill was
14 “[p]retty upset.” *Id.* at 117. Later that day, Gross heard “[s]omebody trying to break the door
15 down” of Hill and Martin’s apartment. *Id.* at 118. The next evening, December 11, 2005, Gross
16 heard an argument between Hill and Martin “when the police officers let him back into the
17 apartment.” *Id.* at 119. And later that night around 1:00 or 1:30 a.m. on December 12, 2005,
18 Gross heard a bang that sounded “like the roof was going to come in.” *Id.* at 120-21. Gross then
19 heard what “sounded like running, somebody running, and then it sounded like a [female] scream
20 and then [he] heard Mr. Hill says: Fuck, and then it got kind of quiet and then more running.” *Id.*
21 at 122-23. Gross then heard one more bang. *Id.* at 123.

22 Julianna Gross, John Gross’ wife, testified that she was friends with Martin and was
23 aware that Martin and Hill were experiencing some problems around December 9, 2005, a few

1 days before her death. ECF No. 26-1 at 145-46. Julianna told Martin that “if she had any
2 problems and, for some reason she couldn’t get to her telephone, that she . . . could stomp on her
3 floor” and Julianna would call 9-1-1. *Id.* at 146, 150. In the early morning hours of December
4 12, 2005, Julianna was woken up to yelling and “a lot of loud movements.” *Id.* at 151. Julianna
5 heard Hill yelling at Martin, but she did not hear Martin yelling at Hill. *Id.* at 154. Julianna
6 called 9-1-1. *Id.* at 151. The police eventually arrived, and everything got quiet again. *Id.* at 155.
7 Then after falling back to sleep for a bit, Julianna heard “[t]he noise start[ing] up again” and “a
8 female’s voice screaming.” *Id.* After the scream, Julianna heard “a really loud bang.” *Id.*
9 Julianna called 9-1-1 again. *Id.* at 156. When the police arrived, they knocked on Hill and
10 Martin’s apartment door for “probably like 10 - - 15 minutes.” *Id.* at 158. During that time,
11 Julianna heard movement, which “sounded like something [big] was being dragged.” *Id.*

12 Patrol Officer Brandon Shatraw was dispatched to Hill and Martin’s apartment following
13 Julianna’s first telephone call to 9-1-1. ECF No. 26-1 at 187. Officer Shatraw spoke with Martin
14 in the front of the apartment while his partner Officer Nunez spoke with Hill at the back of the
15 apartment. *Id.* at 193. Officer Shatraw described Martin as being calm and folding laundry for
16 the entirety of his visit, and following his conversation with Martin, Officer Shatraw determined
17 that “there had been no battery occurring.” *Id.* at 193-94, 199. Because there was no battery,
18 “both the individuals had agreed to separate from each other for the evening by staying in
19 separate rooms.” *Id.* at 196. Officer Shatraw described Hill as being “a bit agitated, upset at the
20 whole situation.” *Id.* at 199. Approximately 30 minutes later, Officer Shatraw went back to Hill
21 and Martin’s apartment following Julianna’s second 9-1-1 call. *Id.* at 200-201. When Officer
22 Shatraw arrived, another officer was knocking on Hill and Martin’s apartment door, so he went
23 down to the Gross’ apartment to see if he could hear anything. *Id.* at 202-03. Officer Shatraw

1 heard what “sounded like footsteps, walking, and then something being moved across the floor.”
2 *Id.* at 203. After Hill opened the door, Officer Shatraw entered the apartment and saw that “[t]he
3 coffee table was flipped over upside door and [was] broken. [The c]ouch was flipped up and
4 tilted sideways and there was a spot of red substance, [which he] believe[d] to be blood, on the
5 floor.” *Id.* at 206. Martin was found in the back bedroom laying on the floor without a pulse and
6 not breathing. *Id.* at 208-209.

7 Patrol Officer Daniel Nunez testified that during his discussion with Hill following the
8 first 9-1-1 call, Hill “told [him] he had been involved in a fight with the female that was in the
9 apartment. That she had come into the room and that she had punched him in the mouth while he
10 was sleeping.” ECF No. 26-2 at 10. Because Hill did not have any apparent injuries and was
11 “wearing normal casual clothes” such that “[i]t didn’t appear that he had been sleeping,” Officer
12 Nunez “asked him again what happened.” *Id.* During this conversation Hill “was a little bit
13 excited. . . . His voice was elevated, wasn’t necessarily screaming, but he was talking fast and
14 kind of moving around a little bit.” *Id.* at 11. Hill then “changed his story. Stated he had been in
15 an argument with a female roommate over her doing laundry - - over her keeping him up. It was
16 late at night. He was trying to get to bed.” *Id.* at 12. Recanting his previous story, Hill indicated
17 that their altercation was only verbal. *Id.*

18 Officer Michael Passarge was dispatched to Hill and Martin’s apartment following
19 Julianna’s second 9-1-1 call. ECF No. 26-2 at 30. Officer Passarge approached the apartment
20 with Officer Nicol, who knocked on the door. *Id.* at 34. After knocking with his knuckles for a
21 minute or two with no answer, Officer Nicol “used his baton” to knock. *Id.* at 35. During this
22 time, Officer Passarge went down to the Grosses’ apartment and could hear “something being
23 moved” in Hill and Martin’s apartment. *Id.* at 39. Officer Passarge went back upstairs, and Hill

1 opened the door after “15, 20 minutes” of knocking. *Id.* at 40. Similarly, Officer Nicol testified
2 that he knocked on Hill and Martin’s apartment door for 19 minutes before Hill opened the door.
3 *Id.* at 56.

4 Officer Lance Royal took Hill into custody on December 12, 2005. ECF No. 26-2 at 85.
5 Officer Royal took Hill to his patrol car and eventually transported him to the Clark County
6 Detention Center and then later to the University Medical Center. *Id.* at 87-89, 93. During that
7 time, Hill made several “unsolicited statements.” *Id.* at 89. First, Hill stated, “[f]ucking bitch
8 come at me with a knife; I take her ass out.” *Id.* at 92. Then Hill later said, “[s]he made me
9 snap,” and “I can’t believe I just did what I did.” *Id.* at 93. Officer Scott Wildermuth also heard
10 Hill make some unsolicited statements. *Id.* at 110. First, Hill said, “going to come attack me
11 while I’m trying to fucking sleep.” *Id.* Hill then said, “I’ll plead temporary insanity for what I
12 did. That was some fucked up shit.” *Id.* at 111. Finally, Hill said, “I just snapped like that,” and
13 “I choked her ass out; I hope she died.” *Id.* Detective Tod Williams also testified that he heard
14 Hill state, “I choked her ass out; I hope she died.” ECF No. 27-5 at 149.

15 Jones, who was discussed in Ground 3(b), testified that Martin “never even raised her
16 voice. She was not that type of person. She was really always calm, cool, and just easy going
17 about everything.” ECF No. 26-2 at 137. Jones never saw Martin be physically confrontational
18 with anyone. *Id.* at 138. Martin had indicated to Jones that she “was going to get a restraining
19 order” against Hill prior to her death. *Id.* at 142. Martin called Jones prior to the police arriving
20 for the first time on December 12, 2005, and told Jones that she was “going to sleep in the living
21 room because” she was “going to get up bright and early” to file the restraining order paperwork.
22 *Id.* at 144, 147, 149. Jones could hear Hill’s voice in the background “saying some real mean
23 and hateful things.” *Id.* Specifically, Hill “called her a bitch. He told her that he left her for a

1 real woman. . . . [W]hen she would ask him: Why are you here? He told her because he can be
 2 and that she's going to take care of him." *Id.* at 148. Hill also told Martin that "[h]e was going to
 3 go call the police hisself [sic] and tell them that he was in his room sleeping. She came in and hit
 4 him in the mouth while he was sleep [sic]." *Id.* at 164-65.

5 2. Relevant statutes

6 Sufficiency of the evidence claims are judged by the elements defined by state law.
 7 *Jackson*, 443 U.S. at 324 n.16. Nevada law defines murder as "the unlawful killing of a human
 8 being . . . [w]ith malice aforethought, either express or implied." Nev. Rev. Stat. § 200.010(1).
 9 And as it relates to the facts of this case, first-degree murder is murder that is "willful, deliberate
 10 and premeditated." Nev. Rev. Stat. § 200.030(1)(a). Willfulness is defined as "the intent to kill."
 11 *Byford v. State*, 116 Nev. 215, 236, 994 P.2d 700, 714 (2000). Deliberation is defined as "the
 12 process of determining upon a course of action to kill as a result of thought, including weighing
 13 the reasons for and against the action and considering the consequences of the action." *Id.* And
 14 premeditation is defined as "a design, a determination to kill, distinctly formed in the mind by
 15 the time of the killing." *Id.* at 237, 994 P.2d at 714.

16 Regarding self-defense, Nevada law provides that:

17 If a person kills another in self-defense, it must appear that:

- 18 1. The danger was so urgent and pressing that, in order
 19 to save the person's own life, or to prevent the person
 20 from receiving great bodily harm, the killing of the
 21 other was absolutely necessary; and
2. The person killed was the assailant, or that the slayer
 had really, and in good faith, endeavored to decline
 any further struggle before the mortal blow was
 given.

22 Nev. Rev. Stat. § 200.200.

23 ////

1 **3. Sufficiency of the evidence**

2 To be sure, there was some evidence supporting Hill’s claim that he either killed Martin
3 in self-defense or that the State lacked sufficient evidence to prove willfulness, deliberation, and
4 premeditation. Officer Nicol testified that a steak knife was found lying underneath a dining
5 table chair. ECF No. 26-2 at 68. And Detective Tod Williams testified that Hill had “two long
6 shallow superficial cuts on the upper left forearm” and “a scratch on the right . . . side of his
7 head,” which appeared to have been caused by a fingernail. ECF No. 27-5 at 140-41. Hill also
8 told Detective Williams that “he had done something he shouldn’t have done, but it was in self-
9 defense.” *Id.* at 150. And later Hill indicated that “he had blacked out and didn’t remember
10 anything.” *Id.*

11 However, the Supreme Court of Nevada has held that “[c]ircumstantial evidence may be
12 considered and provide sufficient evidence to infer” willful, deliberate, and premeditated murder.
13 *Leonard v. State*, 117 Nev. 53, 75, 17 P.3d 397, 411 (2001). Here, viewing the evidence “in the
14 light most favorable to the prosecution” (*Jackson*, 443 U.S. at 319), a rational trier of fact could
15 have found beyond a reasonable doubt that Hill did not act in self-defense and was guilty of first-
16 degree murder. *In re Winship*, 397 U.S. at 364; *Juan H.*, 408 F.3d at 1274; *Jackson*, 443 U.S. at
17 319; Nev. Rev. Stat. § 200.030. Hill had been seeing a new romantic partner, was recently angry
18 at Martin for changing the locks on the apartment, screamed at and verbally abused Martin the
19 night of the killing, appeared to be agitated when law enforcement responded to the first 9-1-1
20 call, lied to law enforcement about Martin battering him, failed to open the door for law
21 enforcement for up to 20 minutes when law enforcement responded to the second 9-1-1 call,
22 strangled Martin for several minutes after she lost consciousness, and admitted that he choked
23 her and hoped she died. Further, there was testimony that Martin was a calm individual who

1 would never be physically confrontational and was acting calm the night of the killing.
2 Fairminded jurists would agree that there was sufficient evidence presented to support Hill's
3 conviction such that his federal constitutional rights were not violated. *Harrington*, 562 U.S. at
4 102. Hill is not entitled to relief on Ground 4.

5 **D. Ground 5**

6 In Ground 5, Hill alleges that his federal constitutional rights were violated due to
7 prosecutorial misconduct.² ECF No. 21 at 21. Hill takes issue with the State's unsupported
8 argument that Martin may not have been dead when law enforcement arrived, the
9 mischaracterization of Olson's testimony regarding the length of time required for strangulation
10 to cause death, and inflammatory statement about enacting justice for Martin. *Id.* at 21-22. In
11 affirming Hill's judgment of conviction, the Supreme Court of Nevada held: "Hill contends
12 that . . . the prosecutor engaged in misconduct during closing argument We have reviewed
13 th[is] argument[] and conclude that [it] lack[s] merit." ECF No. 28-3 at 4 n.3.

14 "[T]he touchstone of due process analysis in cases of alleged prosecutorial misconduct is
15 the fairness of the trial, not the culpability of the prosecutor." *Smith v. Phillips*, 455 U.S. 209,
16 219 (1982). "The relevant question is whether the prosecutors' comments 'so infected the trial
17 with unfairness as to make the resulting conviction a denial of due process.'" *Darden v.*
18 *Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643
19 (1974)); *see also Brown v. Borg*, 951 F.2d 1011, 1017 (9th Cir. 1991) ("Improprieties in closing
20 arguments can, themselves, violate due process."). A court must analyze the remarks "in the
21 context in which they are made." *Boyde v. California*, 494 U.S. 370, 385 (1990). The fairness of
22

23 ² Hill's claims that the State disparaged his trial counsel have been dismissed from this ground.
See ECF Nos. 44, 45, 46.

1 a trial is measured “by considering, inter alia, (1) whether the prosecutor’s comments
 2 manipulated or misstated the evidence; (2) whether the trial court gave a curative instruction; and
 3 (3) the weight of the evidence against the accused.” *Tan v. Runnels*, 413 F.3d 1101, 1115 (9th
 4 Cir. 2005). “[P]rosecutorial misconduct[] warrant[s] relief only if [it] ‘had substantial and
 5 injurious effect or influence in determining the jury’s verdict.’” *Wood v. Ryan*, 693 F.3d 1104,
 6 1113 (9th Cir. 2012) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993)).

7 **1. Alleged unsupported statement regarding the time of death**

8 The prosecutor made the following comment during closing argument: “The evidence
 9 suggests, ladies and gentlemen, that she may not have even been dead when the police got there.
 10 And if she was; she hadn’t been dead for long. So then you have to ask yourselves the question:
 11 What, on God’s green earth is he doing for 19 minutes?” ECF No. 27-7 at 74.

12 The comment that Martin may not have been dead when law enforcement first arrived
 13 was based—if only lightly—on facts that were presented at the trial. Indeed, numerous
 14 witnesses testified that law enforcement knocked on the front door of Hill and Martin’s
 15 apartment for a long time before Hill opened the door: Julianna Gross testified that the knocking
 16 lasted 10 to 15 minutes, Officer Passarge testified that the knocking lasted 15 to 20 minutes, and
 17 Officer Nicol testified that the knocking lasted 19 minutes. ECF No. 26-1 at 158; ECF No. 26-2
 18 at 40, 56. During this time, witnesses could hear something large being moved around Hill and
 19 Martin’s apartment. ECF No. 26-1 at 158, 203; ECF No. 26-2 at 39. Thus, due to the length of
 20 time it took for Hill to open the door after law enforcement arrived, the comment that Martin
 21 *may* not have been dead when law enforcement first arrived is supported by the evidence and, as
 22 such, did not render Hill’s trial unfair. *See Drayden v. White*, 232 F.3d 704, 713 (9th Cir. 2000)
 23 (concluding that the State’s improper closing argument did not infect the trial with unfairness

1 because “the prosecutor’s statements were supported by the evidence and reasonable inferences
2 that could be drawn from the evidence”).

3 **2. Alleged mischaracterization of testimony**

4 During closing argument, the prosecutor said: “when Dr. Olson was given the
5 opportunity to answer why it was fraught with controversy, she said: Yeah, a lot of people in my
6 profession say it takes longer for [sic] five minutes for someone to die.” ECF No. 27-7 at 83.
7 This comment appears to be somewhat of an exaggeration. During her redirect examination,
8 when asked whether strangulation “has to be 3 to 4 minutes . . . uninterrupted . . . to cause
9 death,” Dr. Olson testified that while it was her opinion “it’s most likely between 3 and 4
10 minutes,” it is possible that it can take more or less time than that. ECF No. 26-1 at 63-64, 102.
11 The prosecutor then asked Dr. Olson if she had “reviewed studies of other people in [her] field
12 that say: It could be a lot more than 3 to 4 minutes?” *Id.* at 104-05. Dr. Olson answered in the
13 affirmative. *Id.* at 105.

14 It appears that the prosecutor inflated Dr. Olson’s testimony. Stating that “a lot of
15 people” believe it takes longer than five minutes for someone to die from strangulation stretches
16 the original testimony that “other people . . . say . . . [i]t could be a lot more than 3 to 4 minutes.”
17 *Compare* ECF No. 27-7 at 83 *with* ECF No. 26-1 at 104-05. However, even if the prosecutor
18 may have misstated the evidence, it cannot be determined that this comment “had [a] substantial
19 and injurious effect or influence in determining the jury’s verdict.” *Brecht*, 507 U.S. at 637-38.
20 Indeed, there was significant evidence of Hill’s guilt, which is discussed in Ground 4, especially
21 his statement to law enforcement that he choked Martin and hoped she died. And the jury was
22 instructed that “[s]tatements, arguments and opinions of counsel are not evidence in the case.”
23 ECF No. 27-8 at 29. This instruction supports the conclusion that any misconduct did not

1 amount to a due process violation. *See Allen v. Woodford*, 395 F.3d 979, 998 (9th Cir. 2005)
2 (finding that prosecutorial misconduct did not amount to a due process violation where the trial
3 court gave an instruction that the attorneys' statements were not evidence and where the
4 prosecutors presented substantial evidence of the defendant's guilt).

5 **3. Alleged inflammatory statement**

6 During closing argument, the prosecutor made the following comment:

7 Robin Martin's probably dead, or Robin Martin's in the last minute
8 of her life when that clock stops. The last thing the Judge told you
9 is that when you go back and deliberate, your sole, fixed, and
10 steadfast purpose must be to do equal and exact justice, not only
 between this Defendant but between the State of Nevada, and that
 doesn't just mean the prosecutors at this table. That means Robin
 Martin's family and it means Robin Martin.

11 ECF No. 27-7 at 85.

12 Prosecutors have been "consistently cautioned against [making] prosecutorial statements
13 designed to appeal to the passions, fears and vulnerabilities of the jury." *See United States v.*
14 *Weatherspoon*, 410 F.3d 1142, 1149 (9th Cir. 2005); *see also United States v. Nobari*, 574 F.3d
15 1065, 1077 (9th Cir. 2009) (finding that "[t]he prosecution's comment was an improper appeal to
16 jurors' emotions and fears"). Although this comment may have come close to crossing into
17 improper territory, it cannot be determined that this single comment "so infected the trial with
18 unfairness as to make the resulting conviction a denial of due process." *Darden*, 477 U.S. at
19 181. Fairminded jurists would agree that Hill's federal constitutional rights were not violated by
20 the foregoing comments made by the prosecutor. *Harrington*, 562 U.S. at 102. Hill is not
21 entitled to relief on Ground 5.

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1 **E. Ground 6**

2 In Ground 6, Hill alleges that his federal constitutional rights were violated when the trial
3 judge rejected two defense jury instructions.³ ECF No. 21 at 26. In affirming Hill’s judgment of
4 conviction, the Supreme Court of Nevada held: “Hill contends that the district court abused its
5 discretion in . . . rejecting his proffered jury instructions We have reviewed th[is]
6 argument[] and conclude that [it] lack[s] merit.” ECF No. 28-3 at 4 n.3.

7 The heart of Hill’s argument is that the trial judge prevented him from establishing his
8 defense theory by denying his proposed instructions. *See Mathews v. United States*, 485 U.S.
9 58, 63 (1988) (“As a general proposition a defendant is entitled to an instruction as to any
10 recognized defense for which there exists evidence sufficient for a reasonable jury to find in his
11 favor.”); *see also Bradley v. Duncan*, 315 F.3d 1091, 1099 (9th Cir. 2002) (“[T]he state court’s
12 failure to correctly instruct the jury on the defense may deprive the defendant of his due process
13 right to a present a defense.”). “[A] claim that a court violated a petitioner’s due process rights
14 by omitting an instruction requires a showing that the error ‘so infected the entire trial that the
15 resulting conviction violate[d] due process.’” *Menendez v. Terhune*, 422 F.3d 1012, 1029
16 (2005) (quoting *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977)).

17 Hill’s proposed jury instructions provided: “There is no rule of law dictating that all
18 deaths by strangulation are First Degree Murder or Second Degree Murder or Voluntary
19 Manslaughter” and “Express malice cannot exist if you find the Defendant’s actions were the
20 result of an irresistible passion.” ECF No. 27-6 at 2-3. The trial judge rejected the first
21 proposed instruction because she did not “think this is a correct statement of the law.” ECF No.

22 _____
23 ³ Hill also alleges that Jury Instructions Nos. 10 and 15 misstated the jury’s legal obligation by
improperly minimizing the State’s burden of proof. ECF No. 21 at 26. This argument will be
discussed in Ground 7(d).

1 27-7 at 20. And the judge rejected the second proposed instruction because it “was
2 duplicative.” *Id.* at 21.

3 Hill fails to cite any authority supporting the first proposed jury instruction. And the trial
4 judge accurately instructed the jury about malice⁴ such that the second proposed jury instruction
5 was unnecessary. Thus, Hill fails to demonstrate that the failure to give his proposed instructions
6 “so infected the entire trial that [his] resulting conviction violate[d] due process.” *Henderson*,
7 431 U.S. at 154; *see also Menendez*, 422 F.3d at 1029 (“‘Failure to give [a jury] instruction
8 which might be proper as a matter of state law,’ by itself, does not merit federal habeas relief”
9 (quoting *Miller v. Stagner*, 757 F.2d 988, 993 (9th Cir. 1985))). Fairminded jurists would agree
10 that Hill’s federal constitutional rights were not violated. *Harrington*, 562 U.S. at 102. Hill is
11 not entitled to relief on Ground 6.

12 **F. Ground 7**

13 In Ground 7, Hill alleges that his federal constitutional rights were violated due to his
14 trial counsel’s ineffectiveness. ECF No. 21 at 27. In *Strickland*, the Supreme Court propounded
15 a two-prong test for analyzing claims of ineffective assistance of counsel, requiring the petitioner
16 to demonstrate (1) that the attorney’s “representation fell below an objective standard of
17 reasonableness,” and (2) that the attorney’s deficient performance prejudiced the defendant such
18 that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of
19 the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 688, 694
20

21 ⁴ The jury was instructed that “[m]alice aforethought means the intentional doing of a wrongful
22 act without legal cause or excuse or what the law considers adequate provocation.” ECF No. 27-
23 8 at 7. The jury was also instructed that “[e]xpress malice is that deliberate intention unlawfully
to take away the life of a human being,” and “[m]alice may be implied when no considerable
provocation appears, or when all the circumstances of the killing show an abandoned and
malignant heart.” *Id.* at 8.

(1984). A court considering a claim of ineffective assistance of counsel must apply a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. The petitioner’s burden is to show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. Additionally, to establish prejudice under *Strickland*, it is not enough for the habeas petitioner “to show that the errors had some conceivable effect on the outcome of the proceeding.” *Id.* at 693. Rather, the errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687.

Where a state district court previously adjudicated the claim of ineffective assistance of counsel under *Strickland*, establishing that the decision was unreasonable is especially difficult. *See Harrington*, 562 U.S. at 104–05. In *Harrington*, the Supreme Court of the United States clarified that *Strickland* and § 2254(d) are each highly deferential, and when the two apply in tandem, review is doubly so. *Id.* at 105; *see also Cheney v. Washington*, 614 F.3d 987, 995 (9th Cir. 2010) (internal quotation marks omitted) (“When a federal court reviews a state court’s *Strickland* determination under AEDPA, both AEDPA and *Strickland*’s deferential standards apply; hence, the Supreme Court’s description of the standard as doubly deferential.”). The Supreme Court further clarified that, “[w]hen § 2254(d) applies, the question is not whether counsel’s actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*’s deferential standard.” *Harrington*, 562 U.S. at 105.

1. Ground 7(a)

In Ground 7(a), Hill alleges that his trial counsel failed to adequately prepare for an effective cross-examination of Dr. Olson. ECF No. 21 at 28. Hill elaborates that Dr. Olson changed her testimony regarding the length of time it takes to strangle a person from the

1 preliminary hearing in 2006 to the second trial in 2009, but his trial counsel failed to timely
2 obtain information about the seminar—specifically a pamphlet—that prompted Dr. Olson to
3 make this change. *Id.* at 28-29. In affirming the denial of Hill’s state habeas petition, the
4 Supreme Court of Nevada held:

5 Hill contends that trial counsel should have cross-examined the
6 medical examiner about a pamphlet from a seminar she attended,
7 after which she changed her opinion regarding the length of time it
8 takes to die from strangulation. Hill failed to demonstrate deficient
9 performance considering the medical examiner’s testimony that her
10 opinion was based on information she learned at the seminar and
11 other research, not the information included in the pamphlet. Hill
12 also failed to demonstrate prejudice considering the medical
13 examiner’s testimony that there was not a clear consensus in the
14 medical community regarding how long it takes to die from
15 strangulation and that she could not determine how long the victim
16 was strangled in this case. Although Hill asserts that counsel should
17 have presented expert testimony to demonstrate the lack of
consensus, he does not identify an expert who counsel should have
retained or describe the testimony such an expert would have given
that would not have been cumulative of the medical examiner’s
testimony about the lack of consensus. *See Hargrove*, 100 Nev. at
502, 686 P.2d at 225 (observing that no relief was warranted where
the claim “was not accompanied by the witness’ names or
descriptions of their intended testimony”); *Elam v. Denney*, 662
F.3d 1059, 1067 (8th Cir. 2011) (observing that “failure to present
cumulative evidence does not constitute ineffective assistance of
counsel”). We therefore conclude that Hill has not demonstrated
that the district court erred by denying this claim.

18 ECF No. 28-9 at 3. The Supreme Court of Nevada’s rejection of Hill’s claim was neither
19 contrary to nor an unreasonable application of clearly established law as determined by the
20 Supreme Court of the United States and was not based on an unreasonable determination of the
21 facts.

22 At a preliminary hearing held on December 28, 2005, Dr. Olson testified that
23 “[a]pproximately 60 seconds to 120 seconds” of “continued pressure [would be needed] to

1 interrupt the blood flow to the brain . . . in order to kill someone.” ECF No. 22-2 at 4. Four years
2 later, at Hill’s second trial in June 2009, Dr. Olson testified again about the time required to
3 strangle someone, testifying on direct examination that “[i]n [her] opinion, the blood flow would
4 need to be impeded for a period of three to four minutes to cause death.” ECF No. 26-1 at 94.
5 Dr. Olson then explained, “I have looked at the available literature and published texts and I will
6 say that there is disagreement among those sources as to how long it takes to strangle someone to
7 death.” *Id.*

8 Hill’s trial counsel then cross-examined Dr. Olson about the time required to strangle
9 someone to death. First, Hill’s trial counsel asked Dr. Olson if it was “fair to say that [the time it
10 takes to strangle someone to death] is an issue fraught with controversy?” *Id.* at 99. Dr. Olson
11 responded in the affirmative. *Id.* Second, Hill’s trial counsel asked, “You can’t sit here today
12 and tell us that there was constant pressure of two, three, or even four minutes that caused the
13 death of Robin Martin; can you? You can’t give us a number?” *Id.* at 100. Dr. Olson responded
14 in the negative. *Id.* Third, Hill’s trial counsel asked whether “there’s also subjective physical
15 factors that may have a lot to do with how long it would take a person to be killed by
16 strangulation?” *Id.* at 101. Dr. Olson indicated “that’s also possible.” *Id.* Finally, Hill’s trial
17 counsel asked Dr. Olson whether she testified at the preliminary hearing that it only takes “60
18 seconds to 120 seconds” to strangle someone, and Dr. Olson responded in the affirmative. *Id.*

19 During redirect examination, the prosecutor asked Dr. Olson about the basis for her
20 change in opinion regarding the time it takes to strangle someone to death. *Id.* at 103-105. Dr.
21 Olson testified that the change was the result of a continuing medical education seminar that was
22 put on by the American Academy of Forensic Science. *Id.* at 103. Then, during recross-
23

1 examination, Hill’s trial counsel asked whether that continuing medical education seminar “had
2 to do with hanging deaths,” to which Dr. Olson responded that it did. *Id.* at 105.

3 The Supreme Court of Nevada reasonably concluded that Hill failed to demonstrate that
4 his trial counsel acted deficiently in his cross-examination of Dr. Olson. *Strickland*, 466 U.S. at
5 688. Importantly, because Hill’s trial counsel was able to highlight several issues with Dr.
6 Olson’s opinion regarding the time required to strangle someone to death, it cannot be concluded
7 that his “representation fell below an objective standard of reasonableness.” *Id.*; *see also Dows v.*
8 *Wood*, 211 F.3d 480, 487 (9th Cir. 2000) (“[C]ounsel’s tactical decisions at trial, such as
9 refraining from cross-examining a particular witness or from asking a particular line of
10 questions, are given great deference and must similarly meet only objectively reasonable
11 standards.”). Indeed, Hill’s trial counsel questioned Dr. Olson about her change in testimony,
12 the disagreement that exists among professionals about the time required to strangle someone to
13 death, and the fact that the seminar that changed her opinion was about hanging deaths, not
14 strangulation deaths. Moreover, because Dr. Olson changed her opinion based on the seminar
15 itself, as the Supreme Court of Nevada reasonably noted, it is unclear how the information in a
16 pamphlet would have been beneficial to Hill’s defense. Therefore, because the Supreme Court
17 of Nevada reasonably denied Hill’s ineffective-assistance-of-counsel claim, Hill is not entitled to
18 federal habeas relief for Ground 7(a).

19 **2. Ground 7(b)**

20 In Ground 7(b), Hill alleges that his trial counsel failed to object to Jones’ testimony.
21 ECF No. 21 at 29. He elaborates that his trial counsel should have objected when Jones testified
22 that Martin told her that she intended to obtain a protective order against Hill because this
23 testimony was hearsay, was more prejudicial than probative, and amounted to prior “bad act”

1 evidence. *Id.* at 29-30. In affirming the denial of Hill’s state habeas petition, the Supreme Court
2 of Nevada held:

3 Hill contends that trial counsel should have objected to testimony
4 from the victim’s sister that the victim intended to obtain a
5 protective order. Hill failed to demonstrate deficient performance
6 as the sister’s testimony, when considered in context, does not
7 explicitly or implicitly reference an otherwise inadmissible bad act
8 and therefore an objection would not have been successful on this
9 basis. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103
10 (2006) (“Trial counsel need not lodge futile objections to avoid
ineffective assistance of counsel claims.”). Hill also failed to
demonstrate prejudice as the victim’s intent to obtain a protective
order was elicited from other witnesses whose testimony he does not
challenge. Moreover, he does not contend that the result of trial
would have been different had counsel objected to the victim’s
sister’s testimony. We therefore conclude that Hill has not
demonstrated that the district court erred by denying this claim.

11 ECF No. 28-9 at 4. The Supreme Court of Nevada’s rejection of Hill’s claim was neither
12 contrary to nor an unreasonable application of clearly established law as determined by the
13 Supreme Court of the United States and was not based on an unreasonable determination of the
14 facts.

15 As was discussed in Ground 3(b), the State called Jones as a witness. ECF No. 26-2 at
16 120-21. Jones testified that the day before she was killed, Martin told her that “[s]he was going
17 to get a restraining order” against Hill. *Id.* at 142. Jones then discussed “what [Martin] would
18 need to do to get” a restraining order. *Id.* That night, in the early morning hours of December 12,
19 2005 before she was killed, Martin called Jones to tell her that “[s]he was going to go get a
20 restraining order early the next morning.” *Id.* at 144, 146. Hill’s trial counsel did not object to
21 this testimony. *See id.* at 142, 146.

22 Even if Hill’s trial counsel was deficient for not objecting to Jones’ testimony about
23 Martin wanting to obtain a restraining order against Hill, the Supreme Court of Nevada

1 reasonably determined that Hill fails to demonstrate prejudice. *Strickland*, 466 U.S. at 694. As
2 the Supreme Court of Nevada reasonably noted, testimony that Martin intended to get a
3 restraining order against Hill had already been introduced at trial. Officer Shatraw testified that
4 he responded to Martin's apartment in the early morning hours of December 12, 2005 and spoke
5 with Martin about her altercation with Hill. ECF No. 26-1 at 192-96. Officer Shatraw told
6 Martin that her options to remove Hill from her apartment "were to either have him evicted
7 through the Constable's Office or follow-up through Family Court for a restraining order." *Id.* at
8 197. And Officer Shatraw testified that Martin was already aware of these options: "[s]he knew
9 the address, where to go to get a restraining order and . . . she was quite familiar with the
10 process." *Id.* at 198. Martin indicated that it was her intent to get a restraining order against Hill
11 in the morning. *Id.* Because the jury was already aware of the restraining order issue, Hill fails
12 to demonstrate that the result of his trial would have been different had his trial counsel objected
13 to Jones' restraining order testimony. As such, the Supreme Court of Nevada reasonably denied
14 this claim, and Hill is denied federal habeas relief for Ground 7(b).

15 **3. Ground 7(c)**

16 In Ground 7(c), Hill alleges that his trial counsel implicitly admitted guilt to the jury
17 during voir dire. ECF No. 21 at 30. In affirming the denial of Hill's state habeas petition, the
18 Supreme Court of Nevada held:

19 Hill contends that trial counsel implicitly admitted his guilt during
20 voir dire. Hill failed to demonstrate deficient performance because
21 counsel merely acknowledged that Hill caused the victim's death,
22 which was not in dispute and was consistent with his theories of
23 defense (that he acted without premeditation or deliberation, in the
heat of passion, or in self-defense). *See Armenta-Carpio v. State*,
129 Nev. 531, 306 P.3d 396 (2013) (recognizing that concession as
to some elements may be a reasonable trial strategy depending on
circumstances of case). We therefore conclude that Hill has not
demonstrated that the district court erred by denying this claim.

1 ECF No. 28-9 at 4-5. The Supreme Court of Nevada’s rejection of Hill’s claim was neither
2 contrary to nor an unreasonable application of clearly established law as determined by the
3 Supreme Court of the United States and was not based on an unreasonable determination of the
4 facts.

5 As was discussed in Ground 3(c), during questioning of a prospective juror Hill’s trial
6 counsel stated, “[n]ow, in this case, Robin Martin was found dead, and in this case the defense is
7 not disputing that Mr. Hill was responsible for that. Can you think of some reasons why we’re
8 going to trial?” ECF No. 25-10 at 210. The Supreme Court of Nevada reasonably determined
9 that this comment did not amount to a deficiency on the part of Hill’s trial counsel. As the
10 Supreme Court of Nevada reasonably discussed, this comment simply recognized that Hill was
11 not disputing the cause of Martin’s death—it did not concede guilt. In fact, prior to voir dire,
12 after Hill’s trial counsel introduced himself, his co-counsel, and Hill, Hill’s trial counsel
13 explained that “Robin Martin was found dead on December 12th, 2005, and we do not dispute
14 the fact that she was killed by Leonard Hill.” ECF No. 25-11 at 10. Rather, Hill’s trial counsel
15 explained, “[w]e dispute the charge of murder.” *Id.* As such, as the Supreme Court of Nevada
16 reasonable noted, this disputed comment aligned with Hill’s theory of defense that he killed
17 Martin in a heat of passion or, alternatively, in self-defense. *See* ECF No. 26-1 at 40-41, 47
18 (opening statements by Hill’s trial counsel that “[p]eople act out of . . . passion and that’s what
19 this case is all about” and “Robin Martin comes at Leonard Hill with a knife”). Because the
20 Supreme Court of Nevada reasonably denied this claim, Hill is denied federal habeas relief for
21 Ground 7(c).

22 ////

23 ////

1 **4. Ground 7(d)**

2 In Ground 7(d), Hill alleges that his trial counsel failed to object Jury Instructions Nos.
3 10 and 15, which minimized the State's burden of proof by improperly advising the jury that it
4 could convict him of second-degree murder or manslaughter only if it had a reasonable doubt
5 about the greater offense of first-degree murder. ECF No. 21 at 31. In affirming the denial of
6 Hill's state habeas petition, the Supreme Court of Nevada held:

7 Hill contends that trial counsel should have objected to instructions
8 that he claims informed jurors they could not consider a lesser-
9 included offense unless "some" of them were not convinced of his
10 guilt beyond a reasonable doubt. Hill failed to demonstrate deficient
11 performance or prejudice because the identified instructions (10 and
12 15) are consistent with Nevada law as established in *Green v. State*,
13 119 Nev. 542, 80 P.3d 93 (2003). We therefore conclude that Hill
14 has not demonstrated that the district court erred by denying this
15 claim.

16 ECF No. 28-9 at 5-6. The Supreme Court of Nevada's rejection of Hill's claim was neither
17 contrary to nor an unreasonable application of clearly established law as determined by the
18 Supreme Court of the United States and was not based on an unreasonable determination of the
19 facts.

20 Jury Instruction No. 10 provided:

21 You are instructed that if you find that the State has established that
22 the defendant has committed first degree murder you shall select
23 first degree murder as your verdict. The crime of first degree murder
includes the crime of second degree murder. You may find the
defendant guilty of second degree murder if:

1. You have not found, beyond a reasonable doubt, that
the defendant is guilty of murder of the first degree,
and
2. All twelve of you are convinced beyond a reasonable
doubt the defendant is guilty of the crime of second
degree murder.

If you are convinced beyond a reasonable doubt that the crime of
murder has been committed by the defendant, but you have a
reasonable doubt whether such murder was of the first or of the

1 second degree, you must give the defendant the benefit of that doubt
2 and return a verdict of murder of the second degree.

3 ECF No. 27-8 at 11. Jury Instruction No. 15 provided:

4 The crime of second degree murder includes the crime of voluntary
5 manslaughter. You may find the defendant guilty of voluntary
6 manslaughter if:

- 7 1. You have not found beyond a reasonable doubt that
8 the defendant is guilty of murder of the second
9 degree, and
- 10 2. All twelve of you are convinced beyond a reasonable
11 doubt the defendant is guilty of the crime of
12 voluntary manslaughter.

13 If you are convinced beyond a reasonable doubt that an unlawful
14 killing occurred, but you have a reasonable doubt whether the
15 unlawful killing was second degree murder or voluntary
16 manslaughter, you must give the defendant the benefit of that doubt
17 and return a verdict of voluntary manslaughter.

18 *Id.* at 16.

19 The Supreme Court of Nevada, the final arbiter of Nevada law, reasonably determined
20 that Jury Instructions Nos. 10 and 15 were proper recitations of Nevada law. The Supreme Court
21 of Nevada has held that “when a transition instruction is warranted,” meaning that the jurors
22 need guidance in their “consideration of a primary charged offense [and] the[ir] consideration of
23 a lesser-included offense,” the trial judge is required to “instruct the jury that it may consider a
lesser-included offense if, after first fully and carefully considering the primary or charged
offense, it either (1) finds the defendant not guilty, or (2) is unable to agree whether to acquit or
convict on that charge.” *Green v. State*, 119 Nev. 542, 545, 548, 80 P.3d 93, 95, 97 (2003). Jury
Instruction Nos. 10 and 15 mirror the requirements of *Green*. Jury Instruction No. 10 instructs
the jury that it “may find [Hill] guilty of second degree murder if . . . [y]ou have not found,
beyond a reasonable doubt, that [Hill] is guilty of murder of the first degree.” ECF No. 27-8 at

11. And Jury Instruction No. 15 instructs the jury that it “may find [Hill] guilty of voluntary manslaughter if . . . [y]ou have not found beyond a reasonable doubt that [Hill] is guilty of murder of the second degree.” *Id.* at 16. Because there was no basis under Nevada law to object to Jury Instruction Nos. 10 and 15, the Supreme Court of Nevada reasonably concluded that Hill failed to demonstrate that his trial counsel acted deficiently in not objecting to these instructions. *Strickland*, 466 U.S. at 688. Hill is denied federal habeas relief for Ground 7(d).

5. Ground 7(e)

In Ground 7(e), Hill alleges that his trial counsel failed to object to four disparaging comments that the prosecutor made regarding the defense. ECF No. 21 at 32. Hill contends that these comments prejudiced him because they cast his trial counsel as being disrespectful and as attempting to hide evidence. *Id.* at 35. In affirming the denial of Hill’s state habeas petition, the Supreme Court of Nevada held:

Hill contends that counsel should have objected to prosecutorial misconduct and raised the misconduct on appeal. Hill failed to demonstrate deficient performance or prejudice as none of the identified comments rise to the level of prejudicial misconduct. [Footnote 4: We note that the prosecutor’s comment that defense counsel was performing a “Columbo act” occurred outside the presence of the jury.] *See Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (discussing instances of prosecutorial misconduct). We therefore conclude that Hill has not demonstrated that the district court erred by denying this claim.

ECF No. 28-9 at 6. The Supreme Court of Nevada’s rejection of Hill’s claim was neither contrary to nor an unreasonable application of clearly established law as determined by the Supreme Court of the United States and was not based on an unreasonable determination of the facts.

Hill first takes issue with the italicized comment the prosecutor made during its redirect examination of Dr. Olson:

Q. Subsequent to that, did you do additional research and investigation in order to make an accurate determination about what your opinion would be regarding the length of time it took to strangle someone to death?

[Hill's trial counsel]: Judge, I'm going to object at this point. As of right now, I've received no discovery of this issue except for a 2-page document from some CME.

THE COURT: Okay.

[Hill's trial counsel]: So if there's further - - I'm - - what I'm hearing now from [the State] is there's more than that and I have not received that.

THE COURT: Okay. Your objection's noted. Overruled and you - -

[The State]: And the only thing I would ask - - *if I could trouble the Court to ask [Hill's trial counsel] to properly approach the bench instead of making speaking objections and arguments. He knows he shouldn't do that, Judge.*

THE COURT: You may proceed.

ECF No. 26-1 at 103 (emphasis added).

Second, during his cross-examination of Julianna Gross, Hill's trial counsel asked the clerk for an exhibit that the prosecutor "had . . . on direct." *Id.* at 176. When Hill's trial counsel then asked the prosecutor if it "ha[d] them in [its] possession," the prosecutor responded, "[t]he one you didn't want her to see?" *Id.*

Third, during the redirect examination of Officer Shatraw, the prosecutor asked, "[n]ow [Hill's trial counsel] was asking you a few questions about when you spoke with the homicide

1 detectives and . . . what you answered and what they asked of you?” *Id.* at 231. Officer Shatraw
2 answered, “yes,” and the prosecutor asked, “[a]nd you indicated that you wanted to explain your
3 answer?” *Id.* After Officer Shatraw answered in the affirmative again, the prosecutor followed-
4 up with: “[Hill’s trial counsel] didn’t want to hear it. Will you please tell the members of the
5 jury what that was.” *Id.* Hill’s trial counsel objected to the question as being nonresponsive. *Id.*

6 Fourth, after the State rested, the trial judge excused the jury for a recess. ECF No. 27-5
7 at 158-59. The judge indicated that “this hearing is taking place outside the presence of the jury
8 panel,” and then discussed Hill’s right to testify with him. *Id.* at 159-162. Then, as was more
9 fully discussed in Ground 3(a), the prosecutor told the judge that it wanted Hill’s trial counsel to
10 make an offer of proof regarding Detective Andersen because it did not believe Hill had any
11 basis to call her as a witness regarding the timing of her testing of the DNA evidence. *Id.* at 162-
12 63. After Hill’s trial counsel explained why he wanted to call Detective Andersen, the
13 prosecutor commented, “I mean this with all due respect, but this is kind of a Columbo act we
14 got going on here.” *Id.* at 165.

15 The Supreme Court of Nevada reasonably determined that these four comments did not
16 amount to prosecutorial misconduct. *See Darden*, 477 U.S. at 181. The first comment was a
17 simple reminder that Hill’s trial counsel should have requested a bench conference in order to
18 discuss his objection. This was not improper. The second and third comments implied to a
19 slight degree that Hill’s trial counsel was attempting to block the jury from seeing or hearing
20 specific evidence, but these comments were quick and mild. And the fourth comment was made
21 outside the presence of the jury, resulting in no prejudice to Hill. Accordingly, the Supreme
22 Court of Nevada reasonably concluded that Hill failed to demonstrate that his trial counsel acted
23

1 deficiently in not objecting to these comments. Hill is denied federal habeas relief for Ground
2 7(e).

3 **G. Ground 8**

4 In Ground 8, Hill alleges that his federal constitutional rights were violated due to the
5 cumulative effects of the errors at his trial. ECF No. 21 at 35. In affirming Hill's judgment of
6 conviction, the Supreme Court of Nevada held: "Hill contends that . . . cumulative error warrants
7 reversal of the judgment of conviction We have reviewed th[is] argument[] and conclude
8 that [it] lack[s] merit." ECF No. 28-3 at 4 n.3. And in affirming the denial of Hill's state habeas
9 petition, the Supreme Court of Nevada held: "Hill contends that counsel's derelictions,
10 considered cumulative, entitle him to relief. We disagree because Hill failed to demonstrate any
11 deficiencies in counsel's performance and, therefore, there is nothing to cumulate." ECF No. 28-
12 9 at 6. These rulings were reasonable.

13 Cumulative error applies where, "although no single trial error examined in isolation is
14 sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still
15 prejudice a defendant." *United States v. Frederick*, 78 F.3d 1370, 1381 (9th Cir. 1996); *see also*
16 *Parle v. Runnels*, 387 F.3d 1030, 1045 (9th Cir. 2004) (explaining that the court must assess
17 whether the aggregated errors "so infected the trial with unfairness as to make the resulting
18 conviction a denial of due process" (citing *Donnelly v. DeChristoforo*, 416 U.S. 637, 643
19 (1974)). I have not identified any definite errors, so there are no errors to cumulate. Hill is
20 denied federal habeas relief for Ground 8.⁵

21
22
23 ⁵ Hill requests that I "[c]onduct an evidentiary hearing at which proof may be offered concerning
the allegations in [his] amended petition and any defenses that may be raised by respondents." ECF No. 21 at 37. He fails to explain what evidence would be presented at an evidentiary hearing. And I have already determined that Hill is not entitled to relief. Neither further factual

1 **IV. CERTIFICATE OF APPEALABILITY**

2 This is a final order adverse to Hill. As such, Rule 11 of the Rules Governing Section
 3 2254 Cases requires me to issue or deny a certificate of appealability (COA). Therefore, I have
 4 *sua sponte* evaluated the claims within the petition for suitability for the issuance of a COA. *See*
 5 28 U.S.C. § 2253(c); *Turner v. Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002). A COA may
 6 issue only when the petitioner “has made a substantial showing of the denial of a constitutional
 7 right.” 28 U.S.C. § 2253(c)(2). With respect to claims rejected on the merits, a petitioner “must
 8 demonstrate that reasonable jurists would find the district court’s assessment of the constitutional
 9 claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v.*
 10 *Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if
 11 reasonable jurists could debate (1) whether the petition states a valid claim of the denial of a
 12 constitutional right and (2) whether the court’s procedural ruling was correct. *Id.* Applying these
 13 standards, I find that a certificate of appealability is unwarranted.

14 **V. CONCLUSION**

15 I THEREFORE ORDER that the First Amended Petition for A Writ of Habeas Corpus
 16 Pursuant to 18 U.S.C. 2254 (ECF No. 21) is **DENIED**.

17 I FURTHER ORDER that the petitioner is denied a certificate of appealability.

18 I FURTHER ORDER the Clerk of the Court to enter judgment accordingly.

19 Dated: July 21, 2021.



20 _____
 21 ANDREW P. GORDON
 UNITED STATES DISTRICT JUDGE

22 _____
 23 development nor any evidence that may be proffered at an evidentiary hearing would affect my
 reasons for denying relief. Hill’s request for an evidentiary hearing is denied.